



April 29, 2002

Ms. Christy Wallace
Interim Secretary
The University of Texas Investment Management Company
221 West 6th Street, Suite 1700
Austin, Texas 78701

OR2002-2207

Dear Ms. Wallace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161993.

The University of Texas Investment Management Company ("UTIMCO") received a request for copies of all "information available regarding the individual rates of return of the limited partnerships and the names of the individual principals who manage limited partnerships in which the PUF is a partner." The requestor also seeks all "information available to the public upon request regarding the rates of return and the names of the individual principals who manage Farrallon Capital Offshore, Maverick Fund LTD, Perry Partners International, Inc., and Satellite Fund VLP which all appear under commingled investments on the PUF Detail Schedules of Investment Securities, August 31, 2001." You state that you have provided the requestor with the requested names. You claim, however, that the submitted rate of return information is excepted from disclosure pursuant to section 552.104 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample documents.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the government's interests when it is involved in certain commercial transactions. When a governmental body seeks protection as a competitor we have stated that it must be afforded the right to claim the "competitive advantage" aspect of section 552.104 if it meets two criteria. The governmental body must first demonstrate that it has specific marketplace interests. *See* Open Records Decision No. 593 at 4 (1991). Second, a governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *See id.* at 2. Whether release of particular information would harm the legitimate marketplace interests of a governmental body requires a showing of the possibility of some specific harm in a particular competitive situation. *See id.* at 5, 10.

You state that UTIMCO invests public funds in the private equity marketplace under contract with the University of Texas Board of Regents (the "board") as authorized by section 66.08 of the Education Code. You also state that UTIMCO risks losing investment opportunities if the rate of return information is released because UTIMCO's partners would then not allow UTIMCO to participate in the subject partnerships and would instead turn to other private equity investors who are not subject to the Public Information Act for admission into the partnerships. Based upon our review of your arguments and the rate of return information, we conclude that UTIMCO has demonstrated actual or potential harm to its interests in a particular competitive situation. Accordingly, we conclude that UTIMCO may withhold the information from disclosure pursuant to section 552.104 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling,

the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 161993

Enc: Submitted documents

cc: Ms. Kay McCord
550 Preston Road, Suite 390
Dallas, Texas 75205
(w/o enclosures)